IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1974
No. _____

MARILYN LOUISE CASEY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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Petitioner,MARILYN LOUISE CASEY, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeal for the Ninth Circuit entered August 12,1974,affirm-

ing her conviction under 21 U.S.C.Section 841 (a) (2),and that on hearing the judgment of conviction be reversed.

OPINIONS BELOW

The Opinion of the Court of Appeals is not published and a copy thereof is included in the Appendix. There were no written opinions by the District Court

JURISDICTION

A timely motion to suppress the evidence was made by petitioner and overruled by the District Court; The judgment of conviction was affirmed by the Court of Appeal on August 12,1974. Timely motion for rehearing was denied on September 9,1974. This Court has jurisdiction under 28 U.S.C.A.Section 1254 (1). The question presented here was raised in both the District and

Appellate Courts below.

QUESTION PRESENTED

Whether there was probable cause for the arrest leading to the search that produced the evidence on which the conviction rests.

CONSTITUTIONAL PROVISIONS INVOLVED

"The right of the people to be secured in their persons,houses,papers,and effects,against unreasonable searches and seizures,shall not be violated,and no warrants shall issue,but upon probable cause,supported by Oath or affirmation,and particularly describing the place to be searched,and the

persons or things to be seized."

FOURTH AMENDMENT, CONSTITUTION UNITED STATES OF AMERICA.

STATEMENT OF CASE

On June 13,1973, the Petitioner was arrested without a warrant and searched after she was taken from aboard a Greyhound Bus in Calexico, California. The order for arrest was made by telephone from Agent Washington who was agent in charge of the Customs service in San Luis, Arizona.

At the time that Agent Washington ordered the arrest his decision was based on two reports from informers and a brief 10 minute surveillance of the defendant. The first report came from unknown sources in Alaska and indicated

that a Moses Casey was engaged in narcotics traffic and would travel to the Yuma area to purchase narcotics. It also contained a description of his car. The report did not indicate when Casey would come to Yuma,where he would stay or anything about a specific narcotics transaction. The report did not mention anything at all about the petitioner.

Agent Washington knew from his only previous contact with the rumored operation from Alaska that a man named Smith had come to the Yuma area a year and one-half before,had stayed two days, and had left the area without purchasing narcotics.

On June 13,1974,an informer in Yuma indicated that Moses Casey was in Yuma to purchase narcotics and indica-

ted where Casey was staying. The informer did not indicate how he received his information about the Casey's;nor did he indicate that a drug transaction had occurred or was about to occur.

Immediately the officers set up a surveillance of the motel. This surveillance did not reveal any contact between the Casey's and anyone else. Within ten minutes the Petitioner left the motel and caught a Greyhound Bus to her home. Shortly,thereafter,Moses Casey and his brother left and were stopped and searched with negative results. Thereupon,Agent Washington ordered that petitioner be arrested and searched. Agent Washington did not have any specific information from his agents or informers that a narcotics transaction had taken place.

REASONS FOR GRANTING WRIT

In the Appellant brief of the U. S.Attorney,it was contended that the search could be justified on either a "probable cause" or a "founded suspicion" doctrine. The Writ should be granted to review the standard of probable cause established by the Ninth Circuit in this case. The Court of Appeal based its decision on DRAPER v. UNITED STATES,358 U.S.307 and FONG v. UNITED STATES,422 F 2d 1024,9 Cir.1970. Petitioner contends these cases are distinguishable from the case at bar. Both DRAPER and FONG invclved specific information about a specific narcotics transaction. Moreover,there was ccrroboration by surveillance. In the case at bar,there was neither specific infor-

mation from reliable informers about a specific transaction nor did the surveillance corroborate that the petitioner had either the time or opportunity to engage in such a transaction. It is well established that "common rumor,or report,suspicion,or even strong reason to suspect" are not sufficient to constitute probable cause.

HENRY v.UNITED STATES,361 U.S.98,101,1969

FINALLY,there is a conflict in the Circuit Courts on how to treat the issue of probable cause. The Eighth Circuit in UNITED STATES v.MITCHELL, 425 F 2d 1353 is following a stricter standard of probable cause than is the Ninth Circuit as reflected in Petitioner's case. In effect,the Ninth Circuit

based on the facts in this case has moved away from a probable cause standard to a doctrine of "founded suspicion".

Respectfully Submitted,

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A P P E N D I X

ORDER AFFIRMING

No. 74-1784

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appelee,

vs.

MARILYN LOUISE CASEY,

Defendant-Appellant.

Motion for reconsideration of revocation of bail and petition for rehearing

DENIED.

U.S.COURT OF APPEALS
F I L E D
Sep 9 1974

DO NOT PUBLISH

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* vs. MARILYN LOUISE CASEY, *Defendant-Appellant.*	No. 74-1784 ORDER AFFIRMING

[August 12, 1974]

Appeal from the United States District Court
for the Southern District of California

Before: CHAMBERS and GOODWIN, Circuit Judges, and COPPLE,* District Judge.

The judgment of conviction is affirmed.

We believe under Fong v. United States, 422 F.2d 1024, 9 Cir. 1970, and Draper v. United States, 358 U.S. 307, the conviction is on solid ground.

Bail is revoked effective now.

*The Honorable William P. Copple, United States District Judge for the District of Arizona, sitting by designation.

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DOCKETED

FILED
SEP 9 1974
, Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	No. 74-1784
	)	
vs.	)	
	)	ORDER
MARILYN LOUISE CASEY,	)	
	)	
Defendant-Appellant.	)	
	)	

Before: CHAMBERS and GOODWIN, Circuit Judges, and COPPLE, District Judge.

The motion for reconsideration of revocation of bail and the petition for rehearing are denied.